SUPREME COURT, U. S.

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-835

EUNICE W. FISHER,

Petitioner,

v.

PETER J. BRENNAN, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

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The Petitioner prays that a writ of certiorari issue to review the judgment of the Sixth Circuit Court of Appeals entered in this cause on July 16, 1975.

OPINIONS BELOW

The opinion of the agency is unreported, but it is appended to this petition in the Appendix at pages 1a-6a. The decision of the United States District Court at Knoxville and the decision of the Sixth Circuit Court of Appeals are unreported, but they are recorded in the Appendix at pages 7a-16a.

JURISDICTION

The decision of the Sixth Circuit Court of Appeals was made and entered on July 16, 1975. The time for filing this petition was extended to and including December 13, 1975. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

The Petitioner, an employee of the Bureau of Apprenticeship and Training of the U. S. Department of Labor, applied for a job vacancy in the Bureau for a supervisory position. When her application was not acted upon in the Bureau's selection procedure, she instituted a sex discrimination claim. The hearing examiner and the trial judge decided this case in light of a prior finding that sex discrimination existed in the Bureau to women as a class. Both forums decided the cause upon the fact that the Petitioner was unable to show individual acts of discrimination toward her application. The Court of Appeals agreed, thereby giving rise to the following questions presented:

1. Whether the job requirements of the position of apprenticeship and training representative in the Bureau of Apprenticeship and Training of the U. S. Department of Labor illegally discriminated against the employee based on her sex.

2. Whether the Petitioner's job application for the position of an apprenticeship and training representative in the Bureau was not acted upon due to illegal sex discrimination in the selection procedure.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The pertinent portions of 42 U.S.C., Section 2000e-16(a) are appended to this petition in the Appendix at page 18a. The special qualifications for an apprenticeship and training representative are in the Appendix at page 19a.

STATEMENT

Suit was filed in the district court to review the findings of the civil service examiner pursuant to 42 U.S.C., Sections 2000e-5(f-k) and 2000e-16. The facts are substantially agreed upon by the parties and for brevity can be found in the memorandum opinion of the district court as follows:

Plaintiff is a federal employee in the Bureau of Apprenticeship and Training (BAT) of the United States Department of Labor. She has been a secretary-stenographer in the Knoxville, Tennessee, office since 1953. She has been in grade GS-5 since 1965 and can progress no further as a clerical employee of BAT. She filed this suit under Title 42 U.S.C. § 2000e-16 to review a finding of the United States Civil Service Commission Board of Appeals and Review. Memo. Opinion, App. 7a.

In September, 1972, plaintiff filed an application for a GS-9 position with BAT. On September 29, 1972, she was notified that she did not meet the qualifications for the position. Memo. Opinion, App. 8a.

A formal complaint of sex discrimination was filed and investigated by the Equal Employment Opportunity Commission. As a result, the Assistant Secretary of Labor proposed a settlement of the complaint under the terms of 5 CFR § 713-271(b)(2). The remedies proposed were:

(1) That [she] be given priority consideration for the next available Apprenticeship and Training Representative (ATR) Trainee position in BAT and, if not selected, BAT be required to record the reasons for nonselection; (2) That BAT initiate procedures through the Civil Service Commission to review the present Single-Agency Qualification Standards, GS-243, for Apprenticeship and Training Representative positions to determine if these standards allow women to compete equally with male applicants; and (3) That BAT be instructed to submit an upward mobility program for nonprofessional women in both clerical and nonclerical positions which will provide training opportunities to allow career advancement and development. A copy of the upward mobility program would be submitted to and reviewed by the Department's EEO Office. Memo. Opinion, App. 8a-9a.

Being dissatisfied with the proposal, the plaintiff was granted a hearing on June 27 and July 13 of 1973. The hearing examiner found she failed to meet the job qualifications. Memo. Opinion, App. 9a-10a. He found that she could not qualify in her present position. On August 30, 1973, the hearing examiner supported the earlier recommendations. Memo. Opinion, App. 11a.

On April 2, 1974, the Board of Appeals and Review affirmed the decision of August 30, 1973. The Board concurred in the finding of sex discrimination existing in BAT, but said the standards were not discriminatory. They found that there was only one woman employed at the GS-9 position in BAT and there had never been one so employed in Region IV. Memo. Opinion, App. 11a-12a.

The plaintiff filed this suit to review the decision of the Board and on September 18, 1974, the district court granted judgment for the agency on its motion for summary judgment. App. 16a.

REASONS FOR GRANTING THE WRIT

This case presents an unusual factual situation. During the investigation of the Petitioner's claim, it was discovered that the Bureau discriminated against women as a class. This fact was accepted and considered by the various forums, but each has concluded that the Petitioner's application was summarily denied because she did not meet the job qualifications.

Since the Petitioner had progressed as far as possible in a clerical position with the Bureau, the position of an apprenticeship and training representative was the next position above her classification. Considering the fact that fewer than five women have ever held the position of apprenticeship and training representative, the finding of broad based sex discrimination must cast the job requirements in an unfavorable light. It may well be that the Petitioner did not meet the requirements; but unless this Court demonstrates to the lower courts and hearing examiners throughout the country that the motive and effect of administrative regulations can be reviewed, the power to evade the clear mandate of the law by adopting unnecessarily restrictive regulations will be firmly established. If the overall policy of the Bureau is to discriminate against women and the statistics clearly show a disproportionate share of women in supervisory roles, the law controlling sex discrimination cases, as established by this Court, must dictate a careful examination of the regulations involved.

This is an area of the law that is very new, yet it is developing at the trial level very rapidly. This case presents to the Court an opportunity to establish guidelines for the civil service and the judiciary in considering these claims.

CONCLUSION

For these reasons the Petitioner respectfully requests that the writ be issued.

Respectfully submitted,

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